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10/594,407

09/26/2006

Peter Novak

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207 7590 01/29/2010  
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EXAMINER

THANH, QUANG D

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

01/29/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/594,407 | <b>Applicant(s)</b><br>NOVAK, PETER |  |
|                              | <b>Examiner</b><br>Quang D. Thanh    | <b>Art Unit</b><br>3771             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/26/06</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 1, 3, 5 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Re claim 1, it is unclear how “the sensor operable to modify output characteristics of the source” since the only function of the sensor is to detect pressure.
3. Re claim 3, it is unclear how “the sensor operable to cause the source to provide stimulation prior to a step detection event” since the only function of the sensor is to detect pressure.
4. Re claim 5, it is unclear how “the sensor device is operable to turn the vibrational source on and off” since the only function of the sensor is to detect pressure
5. Re claim 16, “the stimulator” lacks antecedent basis.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 8-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Gray et al. (US 5,357,696).

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8. Re claims 1-6, 13-15, Gray et al. discloses a stimulatory device (fig. 1) for a foot of a subject, comprising: a vibrational source 84/86 (fig. 3B, col. 7, lines 55-57) associated with an article of footwear to the foot of the subject to provide stimulation to the foot through vibrational stimulation; a sensor 68 (fig. 3A) coupled to the source and operable to modify output characteristics of the source; and the sensor being operable to detect a step of the subject (col. 5, lines 42-59); wherein the sensor is located in a heel region of the article (fig. 2); wherein the sensor is operable (via switch 82, fig. 3B) to cause the source to provide stimulation prior to a step detection event; wherein the device may be formed in an insole, to permit insertion of the device in the article with the insertion of the insole (fig. 1-2); wherein the sensor device is operable to turn the vibrational source on and off according to foot pressure (col. 7, lines 10-53); a source controller 70 (fig. 3A and 3B) interposed between the sensor and the vibrational source and operable to receive control inputs from the sensor device and provide control outputs to the vibrational source (col. 6, lines 10-44).
9. Re claims 8-11, Gray et al. discloses wherein the sensor device is operable to indicate proportional force to permit variation in control of the vibrational source; wherein the controller further comprises a processor (processing unit 70, col. 6, lines 24-44) for running an algorithm related to control of the vibrational source based on input information from the sensor device; an item of foot apparel 12 (fig. 1) including the device of claims 1 and 6.
10. Re claims 12 and 16, Gray et al. discloses a method for stimulating a subject's foot during periods of ambulatory activity, comprising: sensing a force indication related

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to movement of the foot of the subject; controlling a stimulation device coupled to the foot of the subject to stimulate the foot of the subject based on sensed force indications; and applying stimulation to the foot of the subject over an interval that includes the foot being supported by an ambulatory support and preventing application of the stimulation during an interval that includes the foot being unsupported by an ambulatory support (see abstract); operating the stimulation based on an algorithm supplied to a processor (processing unit 70 , col. 6, lines 24-44) coupled to the stimulator in conjunction with a sensed force input.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gray et al. (US 5,357,696) in view of Reilly (US 5,836,899). Gray discloses the claimed invention except for the controller operable to vary magnitude of the vibration.

However, Reilly teaches a vibrating mechanism for footwear comprising a controller 68 operable to vary magnitude of the vibration (Col. 3, lines 31-35). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Gray such that the controller is operable to vary magnitude of the vibration as suggested and taught by Reilly, for the purpose of selectively providing various

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vibrational amplitudes to alert the user according to different pre-selected forces as needed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang D. Thanh/  
Primary Examiner, Art Unit 3771